

REMARKS/ARGUMENTS

Claims 37-44 are under examination in this application. Please enter new claims 45 and 46. The Office Action mailed on September 11, 2007, includes the following rejection:

1. Claims 37-44 are rejected under 35 U.S.C. 103(a).

Applicants respectfully address the basis for each of the rejections below.

Finality of the Action

Applicant requests reconsideration of the finality of the rejection of the last Office action, and the finality of that action be withdrawn. The Action presents a new references and new grounds for rejection, which the Applicant has not yet addressed. As stated in paragraph 5 of the Office Action:

5. Applicant's arguments with respect to claims 37-44 have been considered but are moot in view of the new ground(s) of rejection.

Applicant is fully aware that the rules no longer give to an applicant the right to amend as often as new references or reasons for rejection are presented.

While the rules no longer give to an applicant the right to "amend as often as the examiner presents new references or reasons for rejection," present practice does not sanction hasty and ill-considered final rejections. The applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and **not be prematurely cut off in the prosecution of his or her application.** (See MPEP 706.0, emphasis added)

As it is in the interest of the Applicant, as well as in the interest of the public, that prosecution of the application be confined to as few actions as is consistent with a thorough consideration of its merits, Applicant only seeks to bring the prosecution to as speedy a conclusion as possible while receiving a full and fair hearing, and/or to develop a clear issue before appeal. Applicant respectfully request that the finality of the rejection be withdrawn.

Amendment to the Claims

Applicants respectfully submit that the amendments to the claims are fully supported by the application as originally filed and specifically in paragraph [0011, 0013 and 0033].

New claims 45-46 are fully supported by paragraph [0013] of the specification as filed and as such do not introduce new matter.

Claims 37-44 are rejected under 35 U.S.C. § 103 as being unpatentable

Applicants respectfully submit that claims 37-44 are not obvious over United States Patent Number 4,752,496 to Fellows, et al., (hereafter referred to as Fellows) in view of United States Patent Number 5,552,869 to Schilli, et al., (hereafter referred to as Schilli) and further in view of Japanese Patent number JP 01246478 to Nunoo (hereafter referred to as Nunoo) fails to establish a *prima facie* case of obviousness for numerous reasons and claims 37-44 are, therefore, allowable under 35 U.S.C. § 103(a) for the reasons stated below.

As stated in the prior response, and incorporated herein, Fellows and Schilli (and now Nunoo) are all nonanalogous prior art. The MPEP states that, “to rely on a reference under 35 U.S.C. § 103, it must be analogous prior art.” MPEP 2141.01(a). In addition neither Schilli nor Nunoo demonstrate any motivation and any suggestion to combine references. And even if they were analogous art (which they are not) and they did show a motivation to combine combination (which they don’t) the combination of references would still fail to teach each and every limitation of the present invention.

The combination of Fellows, Schilli and Nunoo still fail to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a) as the cited references lack support for the teaching of all of the elements of the present invention in all of the rejected claims.

The combination of a film that encompasses cosmetics to the substrate with a weak adhesion that is easily removable (i.e., Fellows) and the liquid toners and transferring the toner image from the photoconductor element to a final substrate (i.e., Schilli) fail to teach the application of a scent to an article such that cleaning the article will not remove the scented gel carrier from the article. The addition of a silicone-based organic compound (i.e., Nunoo does not

cure this deficiency. Nunoo's limitations were specifically geared towards fibrous material with a solution based perfume that is adsorbed into an inorganic porous powder and mixed with a silicone-based organic compound.

In contrast, the present invention provides a scented gel carrier with one or more scents dispersed in or about a polymer matrix which includes a plastisol-type composition and curing at a temperature that is at about or less than the flashpoint of the scent to bond the scent gel carrier. Nunoo is different than the current application. Nunoo teaches the adsorption of perfume into an inorganic porous powder and mixed with a silicone-based organic compound (Abstract). In fact the present invention teaches away from the technique of Nunoo as stating in paragraph [0013] of the present application:

The scented gel carrier may also include about 5 to about 7 parts of a thickener and about 2 parts catalyst, **which are useful to reduce leaching into porous substrates and to increase the strength of the scented gel carrier upon curing.**
(emphasis added)

The present invention provides a method of applying a scent to an article applying a scented gel carrier to a substrate and curing the scented gel carrier at a temperature that is at about or less than the flashpoint of the scent to bond the scent gel carrier to the article such that one or more washes with a mild detergent of the article will not remove the scented gel carrier from the article. The scented gel carrier includes one or more scents dispersed in or about a polymer matrix which includes a plastisol-type composition and an adhesive or a tackifier. The skilled artisan knows that plastiols type compositions and polymers are common to the industry and are widely used in garment printing due to their easy of printing and adherance to most textiles. In contrast, Nunoo relates to a process of treating a fibrous material (e.g., cotton, silk or wool) imparted with a perfume adsorbed into an inorganic porous powder and mixed with a silicone-based organic compound.

The combination of Fellows, Schilli and Nunoo failed to establish a *prima facie* case of obviousness under 35 U.S.C §103. Simply the combination does not teach each and every limitation of the present invention. Applicants respectfully submit that claims 37-44 are not obvious over the cited art and are, therefore, allowable under 35 U.S.C. § 103(a). Applicants respectfully requests the withdrawal of the rejection of claims 37-44.

Application No. 10/623,281
Amdt. dated Sept. 11, 2007
Reply to Office Action of Jun. 11, 2007

Conclusion

In light of the remarks, amendments and arguments presented above, Applicants respectfully submit that the claims in the Application are in condition for allowance. Favorable consideration and allowance of the pending claims 37-44 are therefore respectfully requested.

If the Examiner has any questions or comments, or if further clarification is required, it is requested that the Examiner contact the undersigned at the telephone number listed below.

Dated: September 11, 2007.

Respectfully submitted,



Chainey P. Singleton
Reg. No. 53,598

ATTORNEY FOR APPLICANTS

Customer No. 34,725
Chalker Flores, LLP
2711 LBJ Freeway Suite 1036
Dallas, TX 75234
214.866.0001 Telephone
214.866.0010 Facsimile